

Regular Session, 2012

HOUSE BILL NO. 1178

BY REPRESENTATIVES LEGER AND ORTEGO

CORPORATIONS: Provides relative to benefit corporations

1 AN ACT

2 To enact Chapter 27 of Title 12 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 12:1801 through 1832, relative to benefit corporations; to enact the "Benefit
4 Corporations Law"; to provide for applicability; to provide for definitions; to provide
5 for formation of benefit corporations; to provide for election and termination of
6 benefit corporation status; to provide for corporate purposes; to provide for a
7 standard of conduct for directors and officers; to provide for a benefit director; to
8 provide for a benefit officer; to provide for a right of action; to require an annual
9 benefits report; to provide for stock certificates; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 27 of Title 12 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 12:1801 through 1832, is hereby enacted to read as follows:

13 CHAPTER 27. BENEFIT CORPORATIONS

14 PART I. PRELIMINARY PROVISIONS

15 §1801. Short title

16 This Chapter shall be known and may be cited as the "Benefit Corporations
17 Law".

18 §1802. Application and effect of Chapter

19 A. This Chapter shall apply to all benefit corporations.

20 B. The existence of a provision of this Chapter shall not of itself create an
21 implication that a contrary or different rule of law is applicable to a business

1 corporation that is not a benefit corporation. This Chapter shall not affect a statute
2 or rule of law that is applicable to a business corporation that is not a benefit
3 corporation.

4 C. Except as otherwise provided in this Chapter, the Business Corporation
5 Law, R.S. 12:1 et seq., shall be generally applicable to all benefit corporations. The
6 specific provisions of this Chapter shall control over the general provisions of the
7 Business Corporation Law. A benefit corporation may be simultaneously subject to
8 this Chapter and one or more other Chapters within this Title.

9 D. A provision of the articles or bylaws of a benefit corporation shall not
10 relax, be inconsistent with, or supersede a provision of this Chapter.

11 §1803. Definitions

12 A. As used in this Chapter, the following terms and phrases shall have the
13 meaning ascribed to them in this Section, unless the context clearly indicates
14 otherwise:

15 (1) "Affiliate" means, in relation to a person, a subsidiary of the person or
16 an entity which owns beneficially or of record a majority of the outstanding equity
17 interests of the person.

18 (2) "Benefit corporation" means a business corporation which has elected
19 to become subject to this Chapter and whose status as a benefit corporation has not
20 been terminated.

21 (3) "Benefit director" means the director designated as the benefit director
22 of a benefit corporation pursuant to R.S. 12:1822.

23 (4) "Benefit enforcement proceeding" means any claim or action for one or
24 both of the following:

25 (a) Failure of a benefit corporation to pursue or create general public benefit
26 or a specific public benefit set forth in its articles.

27 (b) Violation of any obligation, duty, or standard of conduct pursuant to this
28 Chapter.

1 (5) "Benefit officer" means the individual designated as the benefit officer
2 of a benefit corporation pursuant to R.S. 12:1824.

3 (6) "General public benefit" means a material positive impact on society and
4 the environment, taken as a whole, assessed against a third-party standard, from the
5 business and operations of a benefit corporation.

6 (7) "Independent" means having no material relationship with a benefit
7 corporation or a subsidiary of the benefit corporation.

8 (8) "Material relationship" means the relationship between a person and a
9 benefit corporation or any of its subsidiaries if any of the following apply:

10 (a) The person is, or has been within the last three years, an employee, other
11 than a benefit officer, of the benefit corporation, or an affiliate of the benefit
12 corporation.

13 (b) An immediate family member of the person is, or has been within the last
14 three years, an employee, officer, or director of the benefit corporation, or an affiliate
15 of the benefit corporation.

16 (c) There is beneficial or record ownership of five percent or more of the
17 outstanding shares of the benefit corporation by either the person or an entity of
18 which the person is a director, an officer, or a manager, or in which the person owns
19 beneficially or of record five percent or more of the outstanding equity interests.

20 (9) "Minimum vote" means:

21 (a) In the case of a business corporation, the approval by holders of
22 two-thirds of the shares present and voting of each class or series and any other
23 approval or vote required under the Business Corporation Law or the articles.

24 (b) In the case of a domestic entity other than a business corporation, the
25 approval by holders of two-thirds of each class or series of equity interests entitled
26 to vote on any issue and any other approval or vote required under the law governing
27 the internal affairs of the entity or its constituent documents.

28 (10) "Specific public benefit" means any of the following:

29 (a) Serving low-income or underserved individuals or communities.

1 **(b) Promoting economic opportunity for low-income or underserved**
2 **individuals or communities.**

3 **(c) Preserving the environment, promoting positive impacts on the**
4 **environment, or reducing negative impacts on the environment.**

5 **(d) Improving human health.**

6 **(e) Promoting the arts, sciences, or advancement of knowledge.**

7 **(f) Increasing the flow of capital to entities with a purpose listed in this**
8 **Paragraph.**

9 **(g) Historic preservation.**

10 **(h) Urban beautification.**

11 **(11) "Subsidiary" means, in relation to a person, an entity in which the**
12 **person owns beneficially or of record fifty percent or more of the outstanding equity**
13 **interests.**

14 **(12) "Third-party standard" means a recognized standard for defining,**
15 **reporting, and assessing the performance of corporations in producing general public**
16 **benefit and specific public benefits which is all of the following:**

17 **(a) Comprehensive in that it assesses the effect of the corporation and its**
18 **operations in producing general public benefit and any specific public benefit**
19 **specified in the articles.**

20 **(b) Transparent because the following information about the standard is**
21 **publicly available:**

22 **(i) The criteria considered when measuring the overall social and**
23 **environmental performance of a business.**

24 **(ii) The relative weightings, if any, of those criteria.**

25 **(iii) The identity of the directors, officers, material owners, and the**
26 **governing body of the organization that developed and controls revisions to the**
27 **standard.**

28 **(iv) The process by which revisions to the standard and changes to the**
29 **membership of the governing body are made.**

1 (v) An accounting of the sources of financial support for the organization,
2 with sufficient detail to disclose any relationships that could reasonably be
3 considered to present a potential conflict of interest.

4 B. Terms not otherwise defined in Subsection A of this Section shall have
5 the meanings given to them in the Business Corporation Law.

6 C. For purposes of the definitions in this Section, a percentage of ownership
7 in an entity shall be calculated as if all outstanding rights to acquire equity interests
8 in the association have been exercised.

9 §1804. Election of status; corporate name

10 A. A business corporation incorporated in accordance with R.S. 12:21 et seq.
11 may elect to be a benefit corporation under this Chapter by stating in its articles that
12 it is a benefit corporation subject to this Chapter.

13 B. Any amendment to the articles of an existing business corporation to add
14 a statement that it is a benefit corporation subject to this Chapter shall be adopted by
15 at least the minimum vote. The notice of the meeting of shareholders to approve the
16 amendment shall state the specific public benefits, if any, to be included in the
17 purposes of the benefit corporation and shall explain the anticipated impact on
18 shareholders of becoming a benefit corporation.

19 C. If an entity that is not a benefit corporation is a party to a merger or
20 consolidation, and the surviving or new entity in the merger or consolidation is to be
21 a benefit corporation, then the plan of merger or consolidation shall be adopted by
22 at least the minimum vote.

23 D. The corporate name of a benefit corporation shall end with the following
24 phrase, which may be in parentheses, "A Benefit Corporation".

25 §1805. Termination of status

26 A. A benefit corporation may terminate its status as such and cease to be
27 subject to this Chapter by amending its articles to delete the provision required by
28 R.S. 12:1804 to be stated in the articles of a benefit corporation. In order to be
29 effective, the amendment shall be adopted by at least the minimum vote.

1 B. If a merger or consolidation of a benefit corporation would have the effect
2 of terminating the status of a business corporation as a benefit corporation, in order
3 to be effective, the plan of merger or consolidation shall be adopted by at least the
4 minimum vote of the benefit corporation. Any sale, lease, exchange, or other
5 disposition of all or substantially all of the assets of a benefit corporation, unless the
6 transaction is in the usual and regular course of business, shall not be effective unless
7 the transaction is approved by at least the minimum vote.

8 §§1806-1810. [Reserved.]

9 PART II. CORPORATE PURPOSES

10 §1811. Corporate purposes

11 A. A benefit corporation shall have a purpose of creating a general public
12 benefit. This purpose is in addition to its purpose under R.S. 12:21 et seq.

13 B. The articles of a benefit corporation may identify one or more specific
14 public benefits that it is the purpose of the benefit corporation to create in addition
15 to its purposes under R.S. 12:21 et seq. and Subsection A of this Section. The
16 identification of a specific public benefit under this Subsection shall not limit the
17 obligation of a benefit corporation under Subsection A of this Section.

18 C. The creation of a general public benefit and specific public benefit under
19 Subsections A and B of this Section is in the best interests of the benefit corporation.

20 D. A benefit corporation may amend its articles to add, amend, or delete the
21 identification of a specific public benefit that it is the purpose of the benefit
22 corporation to create. In order to be effective, the amendment shall be adopted by
23 at least the minimum vote.

24 E. A professional corporation that is a benefit corporation shall not be
25 deemed in violation of R.S. 12:804, 904, 984, 1054, 1074, 1089, 1113, 1133, 1154,
26 1193, or 1403 by having the purpose to create general public benefit or a specific
27 public benefit.

28 §§1812-1820. [Reserved.]

1 PART III. ACCOUNTABILITY

2 §1821. Standard of conduct for directors

3 A. In discharging the duties of their respective positions and in considering
4 the best interests of the benefit corporation, the board of directors, committees of the
5 board, and individual directors of a benefit corporation:

6 (1) Shall consider the effects of any action or inaction upon all of the
7 following:

8 (a) The shareholders of the benefit corporation.

9 (b) The employees and work force of the benefit corporation, its subsidiaries,
10 and its suppliers.

11 (c) The interests of customers as beneficiaries of the general public benefit
12 or specific public benefit purposes of the benefit corporation.

13 (d) Community and societal factors, including those of each community in
14 which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers
15 are located.

16 (e) The local and global environment.

17 (f) The short-term and long-term interests of the benefit corporation,
18 including benefits that may accrue to the benefit corporation from its long-term plans
19 and the possibility that these interests may be best served by the continued
20 independence of the benefit corporation.

21 (g) The ability of the benefit corporation to accomplish its general public
22 benefit purpose and any specific public benefit purpose.

23 (2) May consider other pertinent factors or the interests of any other group
24 that they deem appropriate.

25 (3) Shall not be required to give priority to the interests of a particular person
26 or group referred to in Paragraph (1) or (2) of this Subsection over the interests of
27 any other person or group unless the benefit corporation has stated in its articles the
28 intention to give priority to certain interests related to the accomplishment of its

1 general public benefit purpose or of a specific public benefit purpose identified in the
2 articles.

3 B. The consideration of interests and factors in the manner required by
4 Subsection A of this Section shall not constitute a violation of R.S. 12:91.

5 C. A director shall not be personally liable for monetary damages for any of
6 the following:

7 (1) Any act or omission covered by a provision in the articles of
8 incorporation that eliminates or limits the liability of the director as authorized in
9 R.S. 12:24(C)(4).

10 (2) Any act or omission as a director if the director performed the duties of
11 office pursuant to R.S. 12:91.

12 (3) Failure of the benefit corporation to pursue or create a general public
13 benefit or specific public benefit.

14 D. A director shall not have a duty to a person that is a beneficiary of the
15 general public benefit purpose or a specific public benefit purpose of a benefit
16 corporation arising from the status of the person as a beneficiary.

17 §1822. Benefit director

18 A. The board of directors of a benefit corporation shall include a director
19 who shall be designated the benefit director and who shall have, in addition to the
20 powers, duties, rights, and immunities of the other directors of the benefit
21 corporation, the powers, duties, rights, and immunities provided for in this Part.

22 B. The benefit director shall be elected, and may be removed, pursuant to
23 R.S. 12:81, and shall be an individual who is independent. The benefit director may
24 serve as the benefit officer at the same time as serving as the benefit director. The
25 articles or bylaws of a benefit corporation may prescribe additional qualifications or
26 duties of the benefit director not inconsistent with this Subsection.

27 C. The benefit director shall be responsible for the preparation of an annual
28 benefit report submitted to shareholders as required by R.S. 12:1831. The benefit
29 director may retain an independent third party to audit the annual benefit report or

1 conduct any other assessment of the corporation's pursuit of its general public benefit
2 purpose and any specific public benefit purpose. The annual benefit report shall
3 include a statement of the benefit director, in the opinion of the benefit director, on
4 all of the following:

5 (1) Whether the benefit corporation acted in accordance with its general
6 public benefit purpose and any specific public benefit purpose in all material respects
7 during the period covered by the report.

8 (2) Whether the directors and officers complied with R.S. 12:1821(A) and
9 1823(A), respectively.

10 (3) If, in the opinion of the benefit director, the benefit corporation or its
11 directors or officers failed to comply with R.S. 12:1821(A) and 1823(A), a
12 description of the ways in which the benefit corporation or its directors or officers
13 failed to comply.

14 D. The act or inaction of an individual in the capacity of a benefit director
15 shall constitute for all purposes an act or inaction of that individual in the capacity
16 of a director of the benefit corporation.

17 E. Regardless of whether the bylaws of a benefit corporation include a
18 provision eliminating or limiting the personal liability of directors authorized by R.S.
19 12:24(C)(4), a benefit director shall not be personally liable for an act or omission
20 in the capacity of a benefit director unless the act or omission constitutes
21 self-dealing, willful misconduct, or a knowing violation of law.

22 F. The benefit director of a professional corporation shall not be required to
23 be independent.

24 §1823. Standard of conduct for officers

25 A. Each officer of a benefit corporation shall consider the interests and
26 factors described in R.S. 12:1821 in the manner provided in that Section if all of the
27 following applies:

28 (1) The officer has discretion to act with respect to the matter.

1 (2) It reasonably appears to the officer that the matter may have a material
2 effect on the creation by the benefit corporation of a general public benefit or a
3 specific public benefit identified in the articles of the benefit corporation.

4 B. The consideration of interests and factors pursuant to Subsection A of this
5 Section shall not constitute a violation of R.S. 12:91.

6 C. An officer shall not be personally liable for monetary damages for either
7 of the following:

8 (1) An action or omission as an officer if the officer performed the duties of
9 the position pursuant to R.S. 12:91.

10 (2) Failure of the benefit corporation to pursue or create general public
11 benefit or specific public benefit.

12 D. An officer shall not have a duty to a person that is a beneficiary of the
13 general public benefit purpose or a specific public benefit purpose of a benefit
14 corporation arising from the status of the person as a beneficiary.

15 §1824. Benefit officer

16 A. A benefit corporation may have an officer designated as the benefit
17 officer.

18 B. A benefit officer shall have all of the following:

19 (1) The powers and duties relating to the purpose of the corporation to create
20 a general public benefit or specific public benefit provided by the bylaws or, absent
21 controlling provisions in the bylaws, by resolutions or orders of the board of
22 directors.

23 (2) The duty to prepare the benefit report required by R.S. 12:1831.

24 C. An officer shall not be personally liable for monetary damages for any of
25 the following:

26 (1) Any act or omission covered by a provision in the articles of
27 incorporation that eliminates or limits the liability of the officer as authorized in R.S.
28 12:24(C)(4).

1 (2) Any act or omission as an officer if the officer performed the duties of
2 office pursuant to R.S. 12:91.

3 (3) Failure of the benefit corporation to pursue or create general public
4 benefit or a specific public benefit.

5 §1825. Right of action

6 A. The duties of directors and officers under this Chapter and the general
7 public benefit purpose and any specific public benefit purpose of a benefit
8 corporation may be enforced only in accordance with this Section in a benefit
9 enforcement proceeding, and no person shall bring an action or assert a claim against
10 a benefit corporation.

11 B. A benefit enforcement proceeding shall be commenced or maintained
12 only directly by the benefit corporation or derivatively by one of the following
13 parties:

14 (1) A shareholder.

15 (2) A benefit director.

16 (3) Other persons as specified in the articles or bylaws of the benefit
17 corporation.

18 §§1826-1830. [Reserved.]

19 PART IV. TRANSPARENCY

20 §1831. Annual benefit report

21 A. A benefit corporation shall prepare an annual benefit report including all
22 of the following:

23 (1) A narrative description of all of the following:

24 (a) The ways in which the benefit corporation pursued a general public
25 benefit during the year and the extent to which the general public benefit was
26 created.

27 (b) The ways in which the benefit corporation pursued a specific public
28 benefit that the articles state it is the purpose of the benefit corporation to create and
29 the extent to which that specific public benefit was created.

1 (c) Any circumstances that have hindered the creation by the benefit
2 corporation of a general public benefit or specific public benefit.

3 (d) The process and rationale for selecting or changing the third-party
4 standard used to prepare the benefit report.

5 (2) An assessment of the performance of the benefit corporation in pursuing
6 the creation of general public benefit against a third-party standard which is either
7 applied consistently with any application of that standard in prior benefit reports or
8 accompanied by an explanation of the reasons for any inconsistent application. The
9 assessment shall not be required to be performed, audited, or certified by a third-
10 party standards provider.

11 (3) The name of the benefit director and the benefit officer, if any, and the
12 address to which correspondence to each of them may be directed.

13 (4) The compensation paid by the benefit corporation during the year to each
14 director in the capacity of a director.

15 (5) The name of each person that owns five percent or more of the
16 outstanding shares of the benefit corporation.

17 (6) The statement of the benefit director pursuant to R.S. 12:1822(C).

18 (7) A statement of any connection between the organization that established
19 the third-party standard, or its directors, officers, or any holder of five percent or
20 more of the governance interests in the organization, and the benefit corporation or
21 its directors, officers, or any holder of five percent or more of the outstanding shares
22 of the benefit corporation, including any financial or governance relationship which
23 might materially affect the credibility of the use of the third-party standard.

24 B. A benefit corporation shall annually send a benefit report to each
25 shareholder either:

26 (1) Within one hundred twenty days following the end of the fiscal year of
27 the benefit corporation.

28 (2) At the same time that the benefit corporation delivers any other annual
29 report to its shareholders.

1 C. A benefit corporation shall post all of its benefit reports on the public
2 portion of its Internet website, if any. The compensation paid to directors and
3 financial or proprietary information included in the benefit reports may be omitted
4 from the benefit reports as posted.

5 D. If a benefit corporation does not have an Internet website, the benefit
6 corporation shall provide a copy of its most recent benefit report, without charge, to
7 any person that requests a copy, but the compensation paid to directors and financial
8 or proprietary information included in the benefit report may be omitted from the
9 copy of the benefit report provided.

10 §1832. Stock certificates

11 All certificates representing shares in a benefit corporation shall contain, in
12 addition to any other statements required by the Business Corporation Law, the
13 following conspicuous language on the face of the certificate: "This corporation is
14 a benefit corporation subject to the Benefit Corporations Law, R.S. 12:1801 et seq."

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Leger

HB No. 1178

Abstract: Establishes the Benefit Corporations Law.

Proposed law creates the Benefit Corporations Law.

Proposed law applies to all benefit corporations.

Proposed law shall not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. Proposed law shall not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

Proposed law provides that, except as otherwise provided in proposed law, the Business Corporation Law shall be generally applicable to all benefit corporations. The specific provisions of proposed law shall control over the general provisions of the Business Corporation Law. A benefit corporation may be simultaneously subject to the Benefit Corporations Law and other provisions of proposed law.

Proposed law prohibits a provision of the articles or bylaws of a benefit corporation from relaxing, being inconsistent with, or superseding a provision of proposed law.

Proposed law defines "affiliate" as, in relation to a person, a subsidiary of the person or an entity which owns beneficially or of record a majority of the outstanding equity interests of the person.

Proposed law defines "benefit corporation" as a business corporation which has elected to become subject to proposed law and whose status as a benefit corporation has not been terminated.

Proposed law defines "benefit director" as the director designated as the benefit director of a benefit corporation under proposed law.

Proposed law defines "benefit enforcement proceeding" as any claim or action for the failure of a benefit corporation to pursue or create general public benefit or a specific public benefit set forth in its articles or the violation of any obligation, duty, or standard of conduct under proposed law.

Proposed law defines "benefit officer" as the individual designated as the benefit officer of a benefit corporation under proposed law.

Proposed law defines "general public benefit" as a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation.

Proposed law defines "independent" as having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

Proposed law defines "material relationship" as the relationship between a person and a benefit corporation or any of its subsidiaries if any of the following apply:

- (1) The person is, or has been within the last three years, an employee, other than a benefit officer of the benefit corporation, or an affiliate of the benefit corporation.
- (2) An immediate family member of the person is, or has been within the last three years, an employee, officer, or director of the benefit corporation or its affiliate.
- (3) There is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation by either the person, or an entity of which the person is a director, an officer, or a manager, or in which the person owns beneficially or of record 5% or more of the outstanding equity interests.

Proposed law defines "minimum vote" as, in the case of a business corporation, the approval by holders of two-thirds of the shares present and voting of each class or series and any other approval or vote required under the Business Corporation Law or the articles.

Proposed law defines "minimum vote" as, in the case of a domestic entity other than a business corporation, the approval by holders of two-thirds of each class or series of equity interests entitled to vote on any issue and any other approval or vote required under the law governing the internal affairs of the entity or its constituent documents.

Proposed law defines "specific public benefit" as any of the following: serving low-income or underserved individuals or communities; promoting economic opportunity for low-income or underserved individuals or communities; preserving the environment, promoting positive impacts on the environment, or reducing negative impacts on the environment; improving human health; promoting the arts, sciences, or advancement of knowledge; increasing the flow of capital to entities with a purpose listed in proposed law; historic preservation; or urban beautification.

Proposed law defines "subsidiary" as, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

Proposed law defines "third-party standard" as a recognized standard for defining, reporting, and assessing the performance of corporations in producing general public benefit and specific public benefits which is all of the following:

- (1) Comprehensive in that it assesses the effect of the corporation operations upon the specific public benefit specified in the articles.
- (2) Transparent because the following information about the standard is publicly available:
 - (a) The criteria considered when measuring the overall social and environmental performance of a business.
 - (b) The relative weightings, if any, of those criteria.
 - (c) The identity of the directors, officers, material owners, and the governing body of the organization that developed and controls revisions to the standard.
 - (d) The process by which revisions to the standard and changes to the membership of the governing body are made.
 - (e) An accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Terms not otherwise defined in proposed law shall have the meanings given to them in the Business Corporation Law.

For purposes of the definitions in proposed law, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the association have been exercised.

Proposed law provides that a business corporation incorporated may elect to be a benefit corporation by stating in its articles that it is a benefit corporation subject proposed law.

Proposed law requires any amendment to the articles of an existing business corporation to add a statement that it is a benefit corporation subject to proposed law to be adopted by at least the minimum vote. Proposed law further requires the notice of the meeting of shareholders to approve the amendment to state the specific public benefits, if any, to be included in the purposes of the benefit corporation and to explain the anticipated impact on shareholders of becoming a benefit corporation.

Proposed law provides that if an entity that is not a benefit corporation is a party to a merger or consolidation, and the surviving or new entity in the merger or consolidation is to be a benefit corporation, then the plan of merger or consolidation shall be adopted by at least the minimum vote.

Proposed law requires the corporate name of a benefit corporation to end with the following phrase, which may be in parentheses, "A Benefit Corporation".

Proposed law provides that a benefit corporation may terminate its status as such by amending its articles to delete the provision required by proposed law to be stated in the articles of a benefit corporation. In order to be effective, the amendment shall be adopted by at least the minimum status vote.

Proposed law provides that if a merger or consolidation of a benefit corporation would have the effect of terminating the status of a business corporation as a benefit corporation, in order to be effective, the plan of merger or consolidation must be adopted by at least the minimum vote. Proposed law further provides that any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum vote.

Proposed law requires a benefit corporation to have a purpose of creating general public benefit.

Proposed law provides that the articles of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create. The identification of a specific public benefit shall not limit the obligation of a benefit corporation to create a general public benefit.

Proposed law provides that the creation of a general public benefit and specific public benefit shall be in the best interests of the benefit corporation.

Proposed law authorizes a benefit corporation to amend its articles to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment shall be adopted by at least the minimum vote.

Proposed law provides that a professional corporation that is a benefit corporation shall not be deemed in violation of provisions prohibiting a professional corporation from having a purpose other than to practice the specified profession by having the purpose to create general public benefit or a specific public benefit.

Proposed law provides that, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors and officers of a benefit corporation shall consider the effects of any action or inaction upon all of the following:

- (1) The shareholders of the benefit corporation.
- (2) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers.
- (3) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.
- (4) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located.
- (5) The local and global environment.
- (6) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.
- (7) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

Proposed law provides that, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees

of the board, and individual directors of a benefit corporation may consider other pertinent factors or the interests of any other group that they deem appropriate.

Proposed law provides that, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation is not required to give priority to the interests of a particular person or group over the interests of any other person or group unless the benefit corporation has stated in its articles its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles.

Proposed law provides that the consideration of interests and factors in the manner required by proposed law shall not constitute a violation of the fiduciary duty of the directors and officers.

Proposed law provides that a director shall not be personally liable for monetary damages for any of the following:

- (1) Any act or omission covered by a provision in the articles of incorporation that eliminates or limits the liability of the director.
- (2) Any act or omission as a director if the director performed the duties of.
- (3) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

Proposed law provides that a director shall not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

Proposed law requires the board of directors of a benefit corporation to include a director who shall be designated the benefit director and who shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided for in proposed law.

Proposed law provides that the benefit director shall be elected, and may be removed, pursuant to the Business Corporations Law and shall be an individual who is independent.

Proposed law authorizes the benefit director to serve as the benefit officer at the same time as serving as the benefit director. Proposed law further authorizes the articles or bylaws of a benefit corporation to prescribe additional qualifications or duties of the benefit director not inconsistent with proposed law.

Proposed law requires the benefit director to prepare an annual benefit report submitted to shareholders.

Proposed law authorizes the benefit director to retain an independent third party to audit the annual benefit report or conduct any other assessment of the corporation's pursuit of its general public benefit purpose and any specific public benefit purpose.

Proposed law requires the annual benefit report to include a statement of the benefit director, in the opinion of the benefit director, on all of the following:

- (1) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report.

- (2) Whether the directors and officers complied with the fiduciary duty contained in proposed law.
- (3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with their fiduciary duty, a description of the ways in which the benefit corporation or its directors or officers failed to comply.

Proposed law provides that the act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.

Proposed law provides that, regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors, a benefit director shall not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

Proposed law provides that the benefit director of a professional corporation shall not be required to be independent.

Proposed law requires each officer of a benefit corporation to consider the interests and factors previously described in proposed law if the officer has discretion to act with respect to a matter and it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of a general public benefit or a specific public benefit identified in the articles of the benefit corporation.

Proposed law provides that the consideration of interests and factors in the manner shall not constitute a violation of the fiduciary duty of the directors and officers.

Proposed law provides that an officer shall not be personally liable for monetary damages for either an action or omission as an officer if the officer performed the duties of the position pursuant to proposed law or the failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

Proposed law provides that an officer shall not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

Proposed law authorizes a benefit corporation to have an officer designated as the benefit officer.

Proposed law requires the benefit officer to have all of the following:

- (1) The powers and duties relating to the purpose of the corporation to create a general public benefit or specific public benefit provided by the bylaws or, absent controlling provisions in the bylaws, by resolutions or orders of the board of directors.
- (2) The duty to prepare the benefit report required by proposed law.

Proposed law provides that an officer shall not be personally liable for monetary damages for any of the following:

- (1) Any act or omission covered by a provision in the articles of incorporation that eliminates or limits the liability of the director.
- (2) Any act or omission as a director if the director performed the duties of"

- (3) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

Proposed law provides that the duties of directors and officers under proposed law and the general public benefit purpose and any specific public benefit purpose of a benefit corporation may be enforced only in accordance with proposed law in a benefit enforcement proceeding, and no person shall bring an action or assert a claim against a benefit corporation.

Proposed law requires a benefit enforcement proceeding to be commenced or maintained directly only by the benefit corporation or derivatively by one of the following parties:

- (1) A shareholder.
- (2) A director.
- (3) Other persons as specified in the articles or bylaws of the benefit corporation.

Proposed law requires a benefit corporation to prepare an annual benefit report including all of the following:

- (1) A narrative description of all of the following:
 - (a) The ways in which the benefit corporation pursued a general public benefit during the year and the extent to which the general public benefit was created.
 - (b) The ways in which the benefit corporation pursued a specific public benefit that the articles state it is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created.
 - (c) Any circumstances that have hindered the creation by the benefit corporation of a general public benefit or specific public benefit.
 - (d) The process and rationale for selecting or changing the third-party standard used to prepare the benefit report.
- (2) An assessment of the performance of the benefit corporation in pursuing the creation of general public benefit against a third-party standard which is either applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment shall not be required to be performed, audited, or certified by a third-party standards provider.
- (3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed.
- (4) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.
- (5) The name of each person that owns 5% or more of the outstanding shares of the benefit corporation.
- (6) The statement of the benefit director.
- (7) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or any holder of 5% or more of the governance interests in the organization, and the benefit corporation or its directors,

officers, or any holder of 5% or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

Proposed law requires a benefit corporation to annually send a benefit report to each shareholder either:

- (1) Within 120 days following the end of the fiscal year of the benefit corporation.
- (2) At the same time that the benefit corporation delivers any other annual report to its shareholders.

Proposed law requires a benefit corporation to post all of its benefit reports on the public portion of its Internet website, if any. The compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

Proposed law provides that, if a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

Proposed law requires all certificates representing shares in a benefit corporation to contain, in addition to any other statements required by the Business Corporation Law, the following conspicuous language on the face of the certificate: "This corporation is a benefit corporation subject to the Benefit Corporations Law, R.S. 12:1801 et seq."

(Adds R.S. 12:1801-1832)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Made technical amendments.
2. Added the definition of "affiliate" and amended the definitions of "material relationship", "specific public benefit", and "third-party standard".
3. Changed "minimum status vote" to "minimum vote" and amended the definition.
4. Provided that terms not defined in proposed law have the meaning given to them in the Business Corporation Law.
5. Provided that for the definitions in proposed law, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the association have been exercised.
6. Changed the procedure for election of status as a benefit corporation.
7. Requires the corporate name of a benefit corporation to end with the following phrase, which may be in parentheses, "A Benefit Corporation".
8. Required the benefit director to prepare an annual benefit report.

9. Provided for a right of action against a benefit corporation.
10. Provided for the contents of the annual benefit report.

House Floor Amendments to the engrossed bill.

1. Made technical amendments.
2. Amended the definitions of "material relationship", "minimum vote", "specific public benefit", and "third party standard".
3. Changed the information required to be in the notice of the meeting of shareholders to approve the adoption of benefit corporation status.
4. Removed references to a "division" and a "share exchange".
5. Provided for protection against liability for directors and officers.
6. Clarified the duties that may be enforced in a benefit enforcement proceeding.